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Supreme Court, U.S.
FILED

97 • 629 SEP - 8 1997

No. OFFICE OF THE CLERK

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

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SHONG-CHING TONG,

Petitioner

v.

PAUL TURNER, COLEMAN A. SWART, PHILIP M. SAETA, DANIEL P. POTTER, LOS ANGELES COUNTY, STATE OF CALIFORNIA,

Respondents

---

# PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

## PETITION FOR WRIT OF CERTIORARI

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Petitioner Pro Se

73PP

## QUESTIONS PRESENTED

1. Should immunity be available to Paul Turner, Coleman A. Swart, Philip M. Saeta, and Daniel P. Potter when their acts and conduct were willful, unlawful, unethical, and unprofessional as asserted in the attached Appendixes?

2. Should the County of Los Angeles and the State of California be held responsible for their employees' unlawful and oppressive acts and conduct?

3. Whether Petitioner's complaint for damages against Paul Turner, Coleman A. Swart, Philip M. Saeta, Daniel P. Potter, the County of Los Angeles, and the State of California was seeking appellate review?

4. Whether District Judge Lew abused his discretion in denying petitioner's motion to disqualify district judge Robert M. Takasugi and magistrate judge James W. McMahon?

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F - Appellant's Reply Brief

G - Appellant's Opening Brief Re Issues Raised

Petitioner prays that a writ of certiorari issue to review the memorandum of the United States Court of Appeals for the Ninth Circuit dated December 6, 1996.

## OPINIONS BELOW

The Memorandum of the Court of Appeals in affirming the dismissal of petitioner's 42 U.S.C. Section 1983 action was issued on December 6, 1996 and is printed in Appendix B.

On June 10, 1997, The Appellate Court denied petitioner's Petition for Rehearing. The Order is printed in Appendix A.

The District Court's Judgment is printed in Appendix C.

The "Petition for Rehearing and Suggestion for Rehearing En Banc" is printed in Appendix E.

The "Appellant's Reply Brief" is printed in Appendixes D and F.

Issues raised in the "Appellant's

Opening Brief" is printed in Appendix G.

## JURISDICTION

The Memorandum of the United States Court of Appeals for the Ninth Circuit was filed on December 6, 1996 and the Order denying Petition for Rehearing was filed on June 10, 1997. The jurisdiction of this Court rests on 28 U.S.C. Section 1254(1).

## STATUTORY PROVISIONS INVOLVED

Title 42 U.S.C. Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, previleges, or immunities, secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

California Constitution, Article VI, Section 3, provides:

> "The Legislature shall divide the

STATE into districts each contain -ing a court of appeal with one or more divisions. Each division consisting of a presiding justice and 2 or more associate justices. It has the power of a court of appeal and shall conduct itself as a 3-judge court. Concurrence of 2 judges present at the argument is necessary for a judgment."

**28 U.S.C. Section 455(a):**

A Federal Judge must disqualify himself or herself from any proceed -ing in which his or her impartiality might reasonably be questioned.

**California Code of Civil Procedure,**

Section 170.1 (a)(6)(C):

Whenever a judge's impartiality might reasonably be questioned, establishes a fundamentally objective standard for disqualification, and the party seeking disqualification no longer need prove that the judge is actually biased.

## STATEMENT OF THE CASE

A. Procedural History:

This case was filed by petitioner on October 24, 1995 for damages against:

1) defendant Paul Turner aka Paul Arthur Turner ("Turner") after he will

-fully, unlawfully, maliciously, and oppressively refused to accept and denied petitioner's "Petition for Writ of Mandate" ("Petition") when the Petition was timely filed, case nos. B 086884, B 087396, and for his repeated violations of "The Americans with Disabilities Act of 1990 ("ADA")" discriminated against petitioner;

2) defendant Coleman A. Swart ("Swart") after he willfully, unlawfully, maliciously, and oppressively dismissed petitioner's case, case no. GC 009783 while he was disqualified from the case no. GC 009783 and for his repeated violations of ADA discriminated against petitioner;

3) Defendant Philip M. Saeta ("Saeta") after he willfully, fraudulently, wantonly, and unethically charged petitioner for work which he was not referred to do and for his overcharge on work did not require much time to do (ER 53, 54);

4) Defendant Daniel P. Potter ("Potter") after he willfully, unlawfully, maliciously, wantonly, fraudulently, and oppressively returned petitioner's "Petition for Writ of Mandate" (B 086884) for his violations of ADA;

5) The County of Los Angeles ("County") after the County repeatedly failed to safely keep records contained in the case file, case no. GC 009783;

6) The State of California ("State") after IT repeatedly failed to train, supervise, and control of defendants Turner and Potter and failed to provide services as petitioner paid for.

On or about November 16, 1995, magistrate judge McMahon, after he has been sued twice by petitioner for his violations of ADA, of petitioner's consti-tutional rights, inter alia, requested magistrate judge Brian Q. Robbins

("Robbins") to transfer the instant case to him even though he knew he should not do so.

On December 15, 1995, petitioner's "Motions" to disqualify district judge Takasugi, magistrate judge McMahon were filed after they have repeatedly abused the judicial process and shown their bias and prejudice toward petitioner.

On January 22, 1996, district judge Lew denied petitioner's motions to disqualify district judge Takasugi, magistrate judge McMahon.

B. Statement of Facts

1. The instant case is not related to any case shopped by magistrate judge McMahon.

2. The instant case had not been consolidated with any case after shopped by magistrate judge McMahon even though he had alleged they are related.

3. Magistrate judge McMahon should disqualify himself from the instant case after he has been sued twice by petitioner as he did in case no. CV 96-4787-GNK (Mc).

4. District judge Takasugi should disqualify himself from the instant case after he has repeatedly discriminated against Chinese People and when he knew magistrate judge McMahon has been sued twice by petitioner.

5. District judge Lew erred in deny -ing of petitioner's motions to disquali -fy district judge Takasugi, magistrate judge McMahon when facts and evidence presented have shown they have repeatedly abused their judicial positions.

6. Defendant Turner, acting along, had no jurisdiction to deny petitioner's "Petition" as untimely when he falsely told defendant Potter to return plain- tiff's "Petition" earlier.

7. Defendant Potter had no right to return petitioner's "Petition" when he should know that defendant Turner, acting along, had violated California Constitution and his acts contradicted well established law.

8. Defendant Swart had no right to deny petitioner's motions to disqualify him from case no. GC 009783 pursuant to Cafilornia Code of Civil Procedure (CCP) section 170.6 and 170 et seq on 7/18/94 and 8/8/94.

9. Defendant Swart had no right to dismiss petitioner's case, case no. GC 009783 after he had been disqualified from the case no. GC 009783 by operation of law.

10. Defendant Swart had failed to faithfully enforce the law when he knew and has known Zhanjun Luo aka Stephen Law has repeatedly used DUMMY names to commit

frauds on the courts and on parties in case no. GC 009783.

11. Defendant Saeta had committed frauds on the court and on parties in case no. GC009783 when he falsely and fraudulently charged hours he knew he did not spend and should not spend so much time for work would not take a professional to spend more than 30 minutes. He had also failed to faithfully enforce California discovery law.

## REASONS FOR GRANTING THE WRIT

### I.

### The Decision Below Erred in Its Resolution of an Important and Recurring Issue significantly Affecting the Admini-stration of Justice - Whether Petition-er's Complaint Against Respondents was Seeking Appellate Review

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In Crooks v. Maynard 913 F.2d 699 (9th Cir. 1990), the court held that:

"Mere fact that defendant is judge does not mean that defendant has absolute immunity: absolute immunity only applies to judicial acts and not administrative, legislative, and executive functions that judges may perform."

Title 42 U.S.C. Section 1983 provides remedy and the following cases provide examples to recover damages from wrong-doers by the abuse of government authori-ty and to deter future constitutional violations:

(1) Owen v. City of Independence, Mo., et al. 445 U.S. 621, 100 S.Ct. 2979

(2) Monroe v. Pape (1961) 365 U. S. at 184, 81 S.Ct. at 482

(3) D. C. Court of Appeals v. Feldman 460 U.S. 462, 490, Mr. Justice STEVENS, in his dissenting opinion, stated that:

"If a challenge to a state court's decision is brought in United States district court and alleges violations of the United States Constitution, then by definition it does not seek appellate review. It is plainly within the Federal question juris-diction of the Federal Court. 28

U.S.C. Section 1331.

(4) Stump v. Sparkman 435 U.S. 349, 55 L.Ed.2d 331, 98 S.Ct. 1099, Mr. Justice STEWART in his dissenting opinion, had stated "A judge is not free, like a loose cannon, to inflict indiscriminate damage whenever he announces that he is acting in his judicial capacity.

(5) Pierson v. Ray 87 S.Ct. 1213, 1220 (1967), Mr. Justice DOUGLAS, in his dissenting opinion, had stated, or quoted, that:

> "Congress intended to provide a remedy for the wrongs being perpetrated."
>
> "The Courts are in many instances under the control of those who are wholly inimical to the impartial administration of law and equity."
>
> "There had been a complete breakdown in the administration of justice in certain States and laws nondiscriminatory on their face were being applied in a discriminatory manner." at p. 1221
>
> "The section's purpose was to provide

redress for the deprivation of civil rights. It was recognized that certain members of the judiciary were instruments of oppression and were partially responsible for the wrongs to be remedied . . . . Some State Courts have been instruments of suppression of civil rights. . . ; but the wrong to be remedied still exists." at p. 1222

"I cannot believe that judges * * * would failed to discharge their duty faithfully and fearlessly according to their oaths and consciences * * *. " at p 1223

In the instant case as demonstrated by Appendixes, respondents Turner, Swart Saeta, and Potter had acted unconstitutionally, unlawfully, and oppressively. Furthermore, what they did was inconsistent with actual justice and not warrant-ed by any principle of law.

Since the Civil Rights Act authorizes any person, who is deprived of any right, privilege, or immunity secured to him by the Constitution of the United States, to bring an action against the wrong-doers in the Federal Courts.

petitioner's complaint was not seeking appellate review and has stated a Federal Cause of Action in the instant case.

II.

Immunity Should Not Be Available to TURNER, SWART, SAETA, and POTTER Because Their Acts and Conduct Were Willful, Unlawful, and Oppressive

As the attached Appendixes D, E, F, and G depict, immunity should not be available to Turner, Swart, Saeta, and Potter, because their acts and conduct were willful, unlawful, oppressive, unethical, and unprofessional and they had show no respect to the law and the judicial system.

III.

THE STATE OF CALIFORNIA AND THE COUNTY OF LOS ANGELES, AS PUBLIC ENTERPRISES, ARE LIABLE FOR THEIR

EMPLOYEES' UNLAWFUL AND WRONGFUL ACTS AND CONDUCT

The United States Constitution, Fifth Amendment provides that respondents, the State of California and the County of Los Angeles, Turner, Swart, Saeta, and Potter shall not deprive of petitioner's life, liberty, or property without due process of law, nor shall take petitioner's property for public use without just compensation.

The United States Constitution, Fourteenth Amendment, Sec. One provides that respondents shall not deprive petitioner's life, liberty, or property, without due process of law; or deny petitioner within its jurisdiction the equal protection of laws.

In the instant case, the State of California and the County of Los Angeles had repeatedly ignored and refused to

take corrective actions after petitioner had presented facts and evidence regarding respondents' wrongful and unlawful acts and conduct as asserted in the Appendixes D. E. F. and G.

Since respondents Turner, Swart, Saeta, and Potter had acted like a loose cannon, had acted unprofessionally and unethically, and the State of California had taken petitioner's money and failed to provide service as the fees paid for, the State of California, as a public enterprise, is liable for damages caused by respondents Turner and Potter.

When petitioner filed the complaint in case no. GC009783, petitioner paid fees as required by law to the County of Los Angeles, who has the duty and respon-sibility to store and file all documents in safe keeping.

From April 22, 1993 to present, even

after petitioner had repeatedly asked the County of Los Angeles to properly and safely keep the court file. Many records had continually disappeared from the case file, case no. GC009783.

Since respondents Swart, Saeta, and the County of Los Angeles had failed to enforce the laws and has failed to keep all records in the case file, case no. GC009783, the County of Los Angeles, as a public enterprise, is liable for its employees' wrongful, unlawful, unethical and unprofessional acts and conduct as alleged in the complaint.

IV.

DISTRICT JUDGE LEW ABUSED HIS DISCRETION IN DENYING PETITIONER'S MOTIONS TO DISQUALIFY DISTRICT JUDGE TAKASUGI AND MAGISTRATE JUDGE JAMES W. MCMAHON

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In Appendix G, petitioner had

presented ample evidence and facts supporting petitioner's motions to disqualify district judge Robert M. Takasugi and magistrate judge James M. McMahon. District Judge Lew and Circuit Judges were abused their discretions in ignoring the Statute and law that denyiny petitioner's motions to disqualify district judge Takasugi and magistrate judge McMahon in the instant case.

## CONCLUSION

Mr. Justice BRENNAN of the United States Supreme Court had stated in Adickes v. Kress & Co., 398 U. S. 144, 190, 90 S.Ct. 1598, 1620, 26 L.Ed.2d 142 (1970):

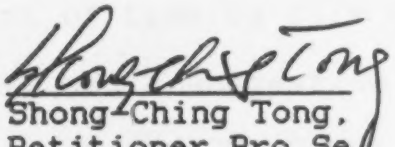
> "How 'Uniquely amiss' it would be, therefore, if the government itself - ' the social organ to which all in our society look for promotion of liberty, justice, fair and equal treatment, and the setting of worthy norms and goals for social conduct' - were permitted to disavow liability for the injury it has begotten."

This case is not to seek reviews of state courts' rulings. Rather, this case is suing for damages for their willful and unlawful violations of petitioner's Civil Rights.

Based upon all of the foregoing points and authorities, respondents' acts and conduct had violated clearly established State and Federal Statutory and the Constitutional Rights of which a reasonable person would have known.

Petitioner respectfully requests that a Writ of Certiorari be issed to review the judgment in the instant case.

Dated: September 7, 1997



Shong-Ching Tong.
Petitioner Pro Se

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | |
|---|---|
| SHONG-CHING TONG, | ) No. 96-55591 |
| Plaintiff-Appellant, | ) D.C. No. CV 95-07196-RMT |
| v. | ) Central California |
| PAUL TURNER, aka, Paul Arther Turner; COLEMAN A. SWART; PHILIP M. SAETA; DANIEL P. POTTER; STATE OF CALIFORNIA; LOS ANGELES COUNTY, | ) OEDER<br>) FILED June 10, 1997 |
| Defendants-Appellees. | ) CATHY A. CATTERSON, CLERK, U.S. COURT OF APPEALS |

Before: SNEED, TROTT, and THOMAS, Circuit Judges.

We construe appellant's motion for relief from default and for permission to file the petition for rehearing and suggestion for rehearing en banc as a motion for enlargement of time to file a petition for rehearing and a suggestion for rehearing en banc, and we GRANT the motion for enlargement. The Clerk shall file the petition for rehearing and suggestion for rehearing en banc which

were received December 24. 1996.

The panel has voted to deny appellant's petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed.R.App.P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | | |
|---|---|---|
| SHONG-CHING TONG, | ) | No. 96-55591 |
| | ) | |
| Plaintiff-Appellant, | ) | D.C. No. CV 95-07196-RMT |
| | ) | |
| v. | ) | |
| | ) | |
| PAUL TURNER, aka, Paul Arther Turner; COLEMAN A. SWART; PHILIP M. SAETA; DANIEL P. POTTER; STATE OF CALIFORNIA; LOS ANGELES COUNTY, | ) | MEMORANDUM* |
| | ) | FILED December, 6, 1996 |
| | ) | CATHY A. CATTERSON, CLERK, U.S. COURT OF APPEALS |
| Defendants-Appellees. | ) | |

Appeal from the United States District Court for the Central District of California Robert M. Takasugi, District Judge, presiding

Submitted December 2, 1996**

Before: SNEED, TROTT, and THOMAS, Circuit Judgs.

* This dosposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed.R.App.P. 34(a); 9th Cir. R. 34-4.

Shong-Ching Tong appeals pro se the district court's judgment dismissing Tong's civil rights action against: (1) Justice Paul Turner of the California Court of Appeal; (2) Los Angeles Superior Court Judge Coleman A. Swart; (3) Daniel P. Potter, Chief Deputy of the Clerk's Office of the California Court of Appeal, Second Appellate District; (4) Philip M. Saeta, a retired state court judge; (5) the State of California; and (6) the County of Los Angeles.

We reject Tong's assertion that the district court improperly denied Tong's motions to disqualify the district judge and the magistrate judge. See Datagate, Inc. v. Hewlett-Packard Co., 941 F.2d 864, 970-71 (9th Cir. 1991) (recusal motion reviewed for abuse of discretion).

We affirm the district court's dismissal of Tong's federal claims with

prejudice and Tong's supplemental state law claims without prejudice for the reasons set forth in the magistrate judge's Report and Recommendation filed February 1, 1996, which the district judge adopted in full in an order filed March 12, 1996.

AFFIRMED.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

| | |
|---|---|
| SHONG-CHING TONG<br><br>Plaintiff,<br><br>v.<br><br>PAUL TURNER, et al.,<br><br>Defendants. | Civil No. CV 95-7196-RMT (Mc)<br><br>JUDGMENT<br><br>FIELD, CLERK, U.S. DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA March 12, 1996 |

Pursuant to the order of the Court adopting the findings, conclusions and recommendations of the United States Magistrate Judge,

The complaint and the entire action are dismissed with prejudice as to all federal claims.

The complaint and the entire action are dismissed without prejudice as to the supplemental state law claims.

Dated: 3/12/96 /S/

Robert M. Takasugi,
U.S. District Judge

LIST OF EXHIBITS FOR APPELLANT'S REPLY BRIEF

Exhibit

1. CCP Section 170.3

2. Order of Dismissal, LASC, East District, KC 004451, 5/10/93

3. Order of Dismissal, LASC, East District, KC 004452, 5/10/93

4. Order Denying Motion to Affirm, CA Court of Appeal, Second Appellate District (CA 2nd), Division Five, B077109 (KC004452), 11/15/93

5. Slip Opinion (?), CA 2nd, Division Five, B077109 (KC004452), 12/28/93

6. Daily Appellate Report, 3/9/94, B070925

7. Slip Opinion, CA 2nd, Division Two, B077108 (KC004451), 6/10/94

8. Orders: 1) Denying Recusal Motion; 2) Denying Motion to Transfer; 3) Dismis-sing Appeal of Shong-Ching Tong; 4) Awarding Costs; and 5) Directing Issuance of Rule 17(a) Notice, CA 2nd, Division Five, B083416 (GC009783), 6/19/94

9. Cover Page, Petition For Review, California Supreme Court, LASC No. VC 014526, CA 2nd No. B086859, 1/16/96

10. Order to Reassign Case, CV 96-4488-RMT (Mc), 10/4/96

I.

INTRODUCTION AND STATEMENT OF APPELLANT

Appellant Shong-Ching Tong seeks rehearing en banc of the December 6, 1996, which was mailed on December 9, 1996 (Exhibit 1), Panel decision (Sneed, J; Trott, J; and Thomas, J) affirming the District Court's judgment dismissing appellant's Complaint for the reasons set forth in the magistrate judge's Report and Recommendation, which the district judge adopted in full.

In the judgment of Appellant, rehear-ing en banc is needed because 1) the Panel's Memorandum has overlooked the federal statute that the magistrate judge James W. McMahon and district Judge Robert M. Takasugi should disqualify themself from the case no. CV 95-7196-RMT (Exhibits 2, 3), 2) district judge Robert M. Takasugi had acted like a

"Rubber Stamp" of magistrate judge James W. McMahon (Exhibit 3, pp. 8 - 10), and 3) the district court failed to give any authority that a paid referee, who is not a judge, who is not a active member of the State Bar, who got the job because his Ex-Pal's special care, and who did not receive parties OK, should/shall be treated like a judicial official (Exhibit 4).

II.

PETITION FOR REHEARING EN BANC

A. THE PANEL'S MEMORANDUM IS INCONSISTENT WITH THE STATUTE THAT THE JUDGMENT SHOULD BE OVERTURNED WHEN MAGISTRATE JUDGE JAMES W. MCMAHON FAILED TO REMOVE HIMSELF FROM THE CASE AND WHEN HE KNEW HE CANNOT/COULD NOT BE IMPARTIAL

28 U.S.C. Section 455(a) provides that a federal judge must disqualify himself or herself from any proceeding in which his or her impartiality might reasonably be questioned.

As Exhibits 2 thru 4 demonstarate. magistrate judge James W. McMahon has acted willfully, unethically, and unprofessionally when he shopped for unrelated cases and he knew he has been acted like a Hatchet Man for someone and a Racist and paid no respect to the law and judicial integrity.

Since magistrate judge was acted improperly and district judge Robert M. Takasugi has acted as a "Rubber Stamp" in the instant case, therefore, the rehear-ing en banc should be granted because:

1) If there is a law such as 28 U.S.C. Sections 144 or 455, then, magistrate judge James W. McMahon and district judge Takasugi should be disqualified from the case no. CV 95-7196;

2) If they had ignored the law as aforesaid, the judgment resulted from their NOT impartial should be vacated.

B. THE PANEL'S MEMORANDUM CONFLICTS WITH MANY PRECEDENTS THAT A JUDGE MUST BE REMOVED FROM A CASE WHEN HIS/HER IMPARTIALITY HAS BEEN IN QUESTION

As Exhibits contained in this "Petition" demonstrate, the Panel has ignored many precedents, In re Reard (4th Cir. 1987), in Preston v. U. S. (9th Cir. 1991), or in Liljeberg v. Health Services Acquisition Corp. (1988) 466 US 847, decided by various Courts that magistrate judge James W. McMahon and District Judge Robert M. Takasugi had acted willfully, unethically, and unprofessionally in the instant case when they failed to remove themselves from the instant case.

III.

PETITION FOR REHEARING WITH SUGGESTION FOR REHEARING EN BANC

A. THE PANEL SHOULD REVERSE THE DISTRICT COURT'S JUDGMENT THAT MAGISTRATE JUDGE JAMES W. MCMAHON AND DISTRICT

JUDGE ROBERT M. TAKASUGI HAD ACTED IMPROPERLY AS AFORESAID

In Pierson v. Ray 87 S.Ct. 1213, 1220 (1967), Mr. Justice DOUGLAS, in his dissenting opinion, had stated, or quoted, that:

"Congress intended to provide a remedy for the wrongs being perpetrated."

"The Courts are in many instances under the control of those who are wholly inimical to the impartial administration of law and equity."

"There had been a complete breakdown in the administration of justice in certain States and laws nondiscriminatory on their face were being applied in a discriminatory manner." at p. 1221

"The section's purpose was to provide redress for the deprivation of civil rights. It was recognized that certain members of the judiciary were instruments of oppression and were partially responsible for the wrongs to be remedied. . . . Some State Courts have been instruments of suppression of civil rights. . . ; but the wrong to be remedied still exists." at p. 1222

"I cannot believe that judges * * * would failed to discharge their duty

> faithfully and fearlessly according to their oaths and consciences * * *. "at p 1223

District judge Robert M. Takasugi and magistrate judge James W. McMahon had knowingly and intentionally ignored facts and evidence that defendants Paul Turner, Coleman A. Swart, and Philip M. Saeta are not entitled to any immunity when they were disqualified from case no. GC 009783.

B. THE PANEL SHOULD VACATE ITS DECISION BECAUSE DISTRICT COURT FAILED TO CITE ANY AUTHORITY THAT DEFENDANTS PHILIP M. SAETA AND DANIEL P. POTTER WERE IMMUNE WHILE ACTED ILLEGALLY

Defendant Philip M. Saeta, who is not an active judge, who is not an active member of the State Bar, and who was not hired by parties, had no right to practice law in case no. GC009783.

Defendant Daniel P. Potter, who knows he should not follow any illegal order given by a single State Justice, had no right to return plaintiff's Petition in

case no. GC009783.

Since magistrate judge James W. McMahon and district judge Robert M. Takasugi had failed to cite any authority in case no. CV 95-7196 supporting their rulings, this Petition for Rehearing should be granted.

IV.

CONCLUSION

For the foregoing reasons, appellant requests rehearing of the issues raised above, and/or rehearing en banc, as appropriate, for reasons set out in the Statement of Appellant, above.

DATED: December 20, 1996

/S/

Shong-Ching Tong,
Appellant Pro Se

Attachments:

Exhibits 1 thru 4, from page 5 thru 14

Plaintiff/Appellant Shong-Ching Tong ("Plaintiff") hereby submits the "Appell-ant's Reply Brief" in support of plaintiff's arguments that defendants/appelle-es ("Defendants") had repeatedly violat-ed plaintiff's civil rights under Consti-tutions of the United States and the State of California, the ADA, Inter alia, as follows:

1. MAGISTRATE JUDGE JAMES W. MCMAHON HAD NO RIGHT TO SHOP FOR THIS CASE AND HE AND DISTRICT JUDGE ROBERT M. TAKASUGI HAD FAILED TO DISQUALIFY THEMSELVES FROM THE INSTANT CASE

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As Exhibits 4, 6 thru 9, and 18 contained in the "Excerpts of Record" and Exhibit 10 enclosed herein depict, magis-trate judge James W. McMahon had unlaw-fully, fraudulently, unethically, and unprofessionally shopped for the instant case when he knew the instant case is

not related to any case and he and distr
-ict judge Robert M. Takasugi had failed
to disqualify themselves from the instant
case when they knew they are not
impartial.

Since Exhibits contained in the "Excerpts of Record" and in this Reply have shown district judge Takasugi and magistrate judge McMahon are not impar-tial and they had failed to disqualify themselves from the instant case, the judgment should be vacated and the instant case should be remanded for further proceedings.

2. DEFENDANT TURNER HAD REPEATEDLY AND UNLAWFULLY ACTED ALONG IN PLAINTIFF'S APPEALS. NO IMMUNITY SHOULD GIVE TO HIM

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Defendant Turner's job is to interpret the law, not to write any law. Defendant Turner knew and should have known that an

appeal has never been a new action. His failures to city any authority and his guilty of obstructions of justice have been proved by Exhibits 7 and 9 contained herein. These facts clearly shown defendant Turner was acting in an administrative function, as presiding justice of Division Five, not in a judicial act, when defendant Turner repeatedly, wanton -ly, and oppressively dismissed plaintiff's appeals.

Also, Exhibits 2 thru 9 containing in this Reply can show that defendant Turner had not only repeatedly and unlawfully violated the California Constitution, Article VI, Section 3, he had also acted unethically, unprofessionally, wantonly, and oppressively in plaintiff's appeals and in other people's appeals. Exhibit 9 contained herein clearly shows defendant Turner had willfully, unlawfully, wanton

-ly. and oppressively dismissed plaintiff's Appeals when there was/is no Statute giving him the right to do so. Thus, defendant Turner was not immuned for his unlawful, willful, wanton, and oppressive acts and conduct.

3. DEFENDANT SWART HAD NO RIGHT TO DISOBEY THE STATUTE NOT TO DISQUALIFY HIMSELF AFTER HIS FAILURES TO RESPOND TO PLAINTIFFS' MOTIONS DISQUALIFYING HIM IN CASE NO. GC 009783

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As Exhibit 1 - California Code of Civil Procedure (CCP) Section 170.3 contained herein - depicts, defendant Swart was disqualified from the case no. GC009783 after his failures to respond to plaintiffs' motions to disqualify him and after he had willfully, unlawfully, unethically, and unprofessionally denied plaintiffs' CCP Section 170.6 "Peremptory Challenges".

Since defendant Swart had no right and authorities to handle plaintiff's case, case no. GC009783, defendant Swart was not immuned from his unlawful, willful, unethical, and unprofessional acts and conduct as he repeatedly committed in case no. GC009783 as complained in the instant case.

4. DEFENDANT POTTER SHOULD PAY FOR HIS WILLFUL AND UNLAWFUL ACTS AND CONDUCT WHEN HE KNEW DEFENDANT TURNER'S ORDER WAS ILLEGAL AND SHOULD BE DISCARD BY DEFENDANT POTTER

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Defendant Potter was a Chief Deputy Clerk of CA 2nd, not just worked for defendant Turner.

The facts <u>that</u> defendant Potter failed to report defendant Turner's illegal requests to his superior - Clerk of CA 2nd - or the Presiding Justice of CA 2nd, <u>that</u> defendant Potter failed to

follow the case Rapp v. Golden Eagle Ins. Co. not to return plaintiff's Petition. and that defendant Potter failed to return plaintiff's filing fees clearly shown defendant Potter was not entitled to any immunity when defendant Potter knew his acts and conduct were willful, unlawful, wanton, oppressive, malicious, and fraudulent.

5. DEFENDANT SAETA WAS NOT A COURT EMPLOYEE OR OFFICER. HE WAS A PAID REFEREE. THEREFORE, NO IMMUNITY SHOULD GIVE TO HIM

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As defined in CCP Section 645.1, defendant Saeta was not a court employee or an officer because he was paid by plaintiff and Stephen Law and he demanded payments prior to his willingness to provide service. Therefore, no immunity should give to him.

Moreover, defendant Saeta was unlaw-

fully given the money-making assignment by defendant Swart. who had ignored the Statute that defendant Swart should obtain plaintiff and Stephen Law's consent prior to defendant Saeta's assignment (CCP Section 638).

Since defendant Saeta had unethically, unprofessionally, unlawfully, and fraudulently handled plaintiff's "Motion for Determining Sanctions", after Stephen Law had repeatedly ignored defendant Swart's orders to pay sanctions and to answer plaintiff's discovery requests, without a hearing and without consent from plaintiff, defendant Saeta was not entitled to any immunity.

6. THE COUNTY OF LOS ANGELES SHOULD BE RESPONSIBLE FOR ITS FAILURES TO MANAGE, SUPERVISE, AND DISCIPLINE ITS EMPLOYEES AND THE OPERATIONS OF THE CLERK'S OFFICE

Defendant Swart was the supervising judge of LASC, Northeast District. The failures of County of Los Angeles to properly and adequately supervise defendant Swart and employees of the Clerk's Office clearly demonstrate County of Los Angeles should be responsible for any damages caused by defendant Swart and employees of the Clerks' Office in miss -ing of file records.

7. THE STATE OF CALIFORNIA SHOULD BE RESPONSIBLE FOR DEFENDANTS TURNER'S AND POTTER'S REPEATED VIOLATIONS OF PLAINTIFF'S CONSTITUTIONAL RIGHTS

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We, as Human Beings, cannot avoid not to make mistake occasionally. The U. S. Supreme Court created the judicial immunity law was because: 1) judicial people were professionally trained and educated: 2) judicial people know they have ethical duties to conduct themselves in highest

standards; and 3) judicial people would perform their jobs faithfully and honestly.

The First Amendment of the U. S. Constitution and Article I, Section 3, of the California Constitution provide that people can and are entitled to petition the Government for redress of grievances.

The State of California has repeated-ly failed to control, supervise, and discipline defendants Turner and Potter for their repeated violations of plaintiff's constitutional rights and of the ADA as proved by Exhibits filed in the instant appeal. Therefore, the State of California should be responsible for defendants Turner's and Potter's unlawful acts and conduct as alleged.

DATED: October 25, 1996

/S/

Shong-Ching Tong,
Appellant Pro Se

1. THE DISTRICT COURT HAD JURISDICTION OVER THE INSTANT CASE

California Constitution, Article VI, Section 3, provides:

> "The Legislature shall divide the STATE into districts each containing a court of appeal with one or more divisions. Each division consisting of a presiding justice and 2 or more associate justices. It has the power of a court of appeal and shall conduct itself as a 3-judge court. Concurrence of 2 judges present at the argument is necessary for a judgment." (In re Christopher A. (1991) CA3d 1154, 277 CR 302.)

On or about June 15, 1994, defendant Turner, again acting alone, unlawfully issued his Orders: (1) DIRECTING PLAINTIFFS, SHONG-CHING TONG TO SHOW THE PRESENT LITIGATION HAS MERIT; AND, (2) STAYING ALL PROCEEDINGS in case no. B083416 (GC 009783).

On or about June 24, 1994, plaintiffs in case no. B083416 filed: (1) "Appellants' Request that this court should ask the California Supreme Court to transfer the

appeal to another Division or another District, etc."; (2) "Appellant Yei-Hwei Tong's Response to court's order to show the present litigation has merit"; (3) "Appellant Shong-Ching Tong's Response to court's order to show the present litigation has merit"; (4) "Request to Recuse Justice Paul Turner, etc."; and (5) "Request to Recuse Justices Paul Turner and Ramona Godoy Perez, etc.".

On or about July 19, 1994, defendant Turner acting alone unlawfully issued Orders: (1) Denying Recusal Motion; (2) Denying Motion to Transfer Appeal; (3) Dismissing Appeal of Shong-Ching Tong; (4) Awarding Costs; and (5) Directing Issuance of Rule 17 (a) Notice.

Pursuant to 28 U.S.C. Section 455(a), A Federal Judge must disqualify himself or herself from any proceeding in which his or her impartiality might reasonably

be questioned.

Pursuant to California Code of Civil Procedure, Section 170.1 (a)(6)(C), Whenever a judge's impartiality might reasonably be questioned, establishes a fundamentally objective standard for disqualification, and the party seeking disqualification no longer need prove that the judge is actually biased.

In Crooks v. Maynard 913 F.2d 699 (9th Cir. 1990), the court held that:

> "Mere fact that defendant is judge does not mean that defendant has absolute immunity; absolute immunity only applies to judicial acts and not administrative, legislative, and executive functions that judges may perform."

In D. C. Court of Appeals v. Feldman 460 U.S. 462, 490, Mr. JUSTICE STEVENS, in his dissenting opinion, stated that:

> "If a challenge to a state court's decision is brought in United States district court and alleges violations of the United States Constitution, then by definition it

does not seek appellate review. It is plainly within the Federal question jurisdiction of the Federal Court. 28 U.S.C. Section 1331 (1976 ed. Supp. V)".

Title 42 U.S.C. Section 1983 provides:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities, secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

In Owen v. City of Independence, Mo., et al. 445 U.S. 621, 100 S.Ct. 2979, the U. S. Supreme Court held that:

"Civil Rights Act, by its terms, creates a species of tort liability that on its face admits of no immunities; its language is absolute and unqualified, and no mention is made of any privileges, immunities, or defenses that may be asserted; rather, it imposes liability upon 'every person,' who, under color of state law or custom, 'subjects, or causes to be subjected, any citizen of the United States to the deprivation of

privileges, or immunities secured by the Constitution and laws." U.S.C.A.Const. Amend. 14.

"The purpose of the Act (is) to provide protection to those persons wronged by the abuse of government authority and to deter future constitutional violations . . . .".

The U. S. Supreme Court further held that:

"Section 1983 was intended not only to provide compensation to the victims of past abuses, but to serve as deterrant against future constitu-tional deprivations, as well."

"The Act imposes liability upon every person who, under color of State law or custom, subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws"

In Wood v. Strickland 420 U. S. 308, 95 S.Ct. 992, 43 L.Ed.2d 214 (1975). the U. S. Supreme Court held that:

"A school board member is not immune from liability for damages under section 1983 if he knew or reason-ably should have known that the action he took within his sphere of official responsibility would

violate the constitutional rights of the student affected, or if he took the action with malicious intention to cause a deprivation of Constitutioal rights or other injury to the student."

In Monroe v. Pape (1961) 365 U. S. at 184. 81 S.Ct. at 482. the U. S. Supreme Court held that:

"The central aim of the Civil Rights Act was to provide protection to those persons wronged by the misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law (Quoting United States v. Classic. 313 U. S. 299, 326, 61 S.Ct. 1031, 1043. 85 L.Ed. 1368 (1941)). By creating an express federal remedy, Congress sought to enforce provisions of the Fourteenth Amendment against those who carry a badge of authority, whether they act in accordance with their authority or misuse it."

As Exhibits contained in EX 5 and EXs 15, 16. and 19 depict, defendants had acted unconstitutionally, unlawfully, willfully, fraudulently, wantonly, and oppressively in case no. GC 009783, B086884. and B087396, betrayed their

their oaths. ignored and circumvented the laws not to obey the State law. obstructed the enforcement of a State court's sanctions against Stephen Law.

In Stump v. Sparkman 435 U.S. 349, 55 L.Ed.2d 331. 98 S.Ct. 1099. Mr. JUSTICE STEWART in his dissenting opinion. had stated "A judge is not free. like a loose cannon. to inflict indiscriminate damage whenever he announces that he is acting in his judicial capacity.

In Pierson v. Ray 87 S.Ct. 1213, 1220 (1967). Mr. JUSTICE DOUGLAS. in his dissenting opinion, had stated. or quoted. that:

> "Congress intended to provide a remedy for the wrongs being perpetrated."
>
> "The Courts are in many instances under the control of those who are wholly inimical to the impartial administration of law and equity."
>
> "There had been a complete breakdown in the administration of justice in certain States and laws nondiscri-

minatory on their face were being applied in a discriminatory manner." at p. 1221

"The section's purpose was to provide redress for the deprivation of civil rights. It was recognized that certain members of the judiciary were instruments of oppression and were partially responsible for the wrongs to be remedied . . . . Some State Courts have been instruments of suppression of civil rights . . .; but the wrong to be remedied still exists." at p. 1222

"I cannot believe that judges * * * would failed to discharge their duty faithfully and fearlessly according to their oaths and consciences * * *." at p 1223

In Monroe v. Pape 81 S.Ct. 473, 476 (1961), the Supreme Court held that"

"The question with which we now deal is the narrower one of whether Congress, in enacting Section 1979, meant to give a remedy to parties deprived of constitutional rights, privileges and immunities by an official's abuse of his position (Citations omitted). We conclude that it did so intend."

In the instant case as demonstrated by documents contained in the "Excerpts of Record", defendants Turner, Potter,



BEST AVAIL

and Swart had acted unconstitutionally, unlawfully, and oppressively. Furthermore, what they did was inconsistent with actual justice and not warranted by any principle of law.

2. DISTRICT JUDGE LEW ERRED IN DENYING PLAINTIFF'S MOTIONS TO DISQUALIFY DISTRICT JUDGE TAKASUGI, MAGISTRATE JUDGE MCMAHON

A Federal Judge must disqualify himself or herself from any proceeding in which his or her impartiality might reasonably be questioned. 28 U.S.C. Section 455(a).

In Milgard Tempering, Inc. V. Selas Corp. of Am., 902 F.2d 703, 714 (9th Cir. 1990), the Court, quoting Herrington v. Sonoma County, 834 F.2d 1488, 1503 (9th Cir., 1987), held that:

> "The test for recusal in this Circuit is whether a reasonable person with knowledge of all the facts would



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conclude that the judge's impartiality might reasonably be questioned."

In Roberts v. Bailer (6th Cir. 1980) 625 F2d 125. 127. and in Harris v. Champion (10th Cir. 1994) 15 F3d 1538, 1571-1572. the courts held that:

> "If a judge's comment indicating a closed mind on key issue in the case and would cause a reasonable person to question the judge's impartiality. may compel recusal."

In the instant case. as stated in plaintiff's motions to disqualify magistrate judge McMahon, magistrate judge McMahon had shopped for cases. which had assigned to other magistrate judges, which were pending for other magistrate judges' rulings re defendants' motions to dismiss. and which were not related cases (EXs 4, 18).

Moreover, as magistrate judge James W. McMahon's statements contained in his "Report" demonstrate (EX 10), magistrate judge McMahon had preconceived views,

which had risen to the level of personal bias and had shown his mind was "irrevocally closed" on issues in the instant case.

Since magistrate judge McMahon had been sued by plaintiff twice for obstruc-tion of justice and discriminations against disabled person and Chinese people, and was incapable of judging the controversies fairly on the basis of circumstances, district judge Takasugi erred in adopting magistrate judge McMahon's "Report and Recommendation" (Southern Pacific Communications v. AT & T (DC Cir. 1984) 740 F2d 980).

In re Beard (4th Cir. 1987) 811 F2d 818, in Preston v. United States (9th Cir. 1991) 923 F2d 731, and in Liljeberg v. Health Services Acquisition Corp. (1988) 466 US 847, the courts held that:

> "Disqualification is required if a reasonable factual basis exists for doubting the judge's impartiality; The inquiry is whether a reasonable person would have a reasonable basis for questioning the judge's impartiality, not whether the judge is in fact impartial."

As EXs 1, 4, 6, 7, 8, 9, 10, 11, 17, and 18 depict, district judge Lew erred in denying plaintiff's motions to disqualify district judge Takasugi and magistrate judge McMahon when district judge Lew knew that cases shopped by magistrate judge McMahon and district judge Takasugi were not related and that plaintiff had sued magistrate judge McMahon twice for his repeated unlawful acts and conduct.

Furthermore, in case no. CV 94-4787-RMT (Mc), while plaintiff's motion to disqualify magistrate judge McMahon was pending and he was/is not a Article III judge, magistrate judge McMahon held a hearing on defendants' motion for Summary

Judgment on 9/15/95 and district judge Takasugi adopted magistrate judge McMahon's "Report and Recommendation" to dismiss plaintiff's complaint.

As ER 163 thru 166 (EX 18) depict, district judge Takasugi and magistrate judge McMahon not only knew case no. CV 95-2191-KN (AJW), CV 95-4438-LGB (E), CV 95-3895-DT (CT), CV 95-4292-JSL (BQR) are /were not related, they had never had any intention to consolidate them (if the cases were related). Instead, Magistrate judge McMahon and district judge Takasugi disposed of them piecemeal.

As EX 8 depicts, district judge Lew not only had not reviewed those cases as requested by plaintiff for judicial notice, district judge Lew had also ignored facts and law in denying plaintiff's motions to disqualify district judge Takasugi and magistrate judge

McMahon (ER 162 - Order to reassign case).

3. DEFENDANT TURNER HAD VIOLATED CALIFORNIA CONSTITUTION ARTICLE VI. SECTION 3

California Constitution. Article VI. Section 3. provides:

> "The Legislature shall divide the STATE into districts each contain -ing a court of appeal with one or more divisions. Each division consisting of a presiding justice and 2 or more associate justices. It has the power of a court of appeal and shall conduct itself as a 3-judge court. Concurrence of 2 judges present at the argument is necessary for a judgment." (In re Christopher A. (1991) CA3d 1154, 277 CR 302.)

On June 27, 1994, plaintiffs in case no. GC 009783 (B083416) filed the follow -ing documents in response to orders of defendant Turner issued on June 18, 1994:

1) Appellants' Request that this court should ask the California Supreme Court to transfer the appeal to another Division or another District, etc.;

2) Request to Recuse Justices Paul

Turner and Ramona Godoy Perez, etc.;

3) Request to Recuse Justice Paul Turner, etc.;

4) Appellant Shong-Ching Tong's Response to court's Order to show the present litigation has merit; and

5) Appellant Yei-Hwei Tong's Response to this court's Order to show the present litigation has merit.

On July 19, 1994, defendant Turner, acting along, issued his unlawful Orders: (1) Denying Recusal Motion; (2) Denying Motion to Transfer Appeal; (3) Dismissing Appeal of Shong-Ching Tong; (4) Awarding Costs; and (5) Directing Issuance of Rule 17(a) Notice.

California Rules of Court, Rule 26 (a) provides that cases pending in the Appellate Court can be transferred to another Division or District by the California Supreme Court.

In National Kinney v. Workers' Comp. Appeals Bd. (1980) 113 CA3d 203. 169 CR 801. the California Court held that parties in an Appeal can ask the Appellate Court to request the California Supreme Court to transfer an appeal case.

In the afore-said "Appellants' Request that this court should ask the California Supreme Court to transfer the Appeal to another Division or another District", plaintiffs had submitted evidence and fatcs that defendant Turner had no jurisdiction to deny plaintiffs' Request for transfer after defendant Turner had been requested to disqualify himself from the case no. B083416. Again, pursuant to Califorina Constitution, Article VI. Section 3, defendant Turner, acting alone, could not and should not think he was/is the California Court of Appeal (ER 120a).

4. DEFENDANT SWART'S ACTS AND CONDUCT WERE NOT JUDICIAL ACTS AFTER HE WAS DISQUALIFIED BY OPERATIONS OF LAW (CALIFORNIA CODE OF CIVIL PROCEDURE (CCP). SECTION 170 ET SEQ)

California Code of Civil Procedure (CCP), Section 170.1 (a)(6)(C), providing for disqualification whenever a judge's impartiality might reasonably be question -ed, establishes a fundamentally objective standard for disqualification, and the party seeking disqualification no longer need prove that the judge is actually biased.

In United Farm Workers of America v. Superior Court (1985) 170 Cal.App.3d 97. 103-104. 216 CR 4, the California Court held that "disqualification is mandated if a reasonable person would entertain doubts concerning the judge's impartiality."

Code of Civil Procedure, Section 170.6 provides that:

"(1) No judge, . . . .. shall try any civil or criminal action or special proceeding . . . nor hear any matter therein . . . when . . . the judge or . . . is prejudiced against any party . . . appearing in the action or proceeding."

"(2) Any party to . . such action or proceeding may establish this preju-dice by an oral or written motion without notice supported by affida-vit or declaration under penalty of perjury or an oral statement under oath that the judge . . . before whom the action . . . is pending . . . is prejudiced against any such party or . . . attorney so that the party or attorney cannot have a fair and impartial trial or hearing . . . . where the judge, . . . . . other than a judge assigned to the case for all purposes, . . . .the motion shall be made at least 5 days before that date. . . . "

"(3) If the motion is duly presented and the affidavit or declaration under penalty of perjury is duly filed or such oral statement under oath is duly made, . . . the judge supervising the master calendar, if any, shall assign some other judge, . . . to try the case or hear the matter. . . ."

On or about July 18, 1994, plaintiff

filed a "Peremptory Challenge" under CCP Section 170.6 to disqualify defendant Swart from the case no. GC 009783 (ER 55 - 59) after Stephen Law constantly misused the Discovery Process and defendant Swart repeatedly refused plaintiff and other cross-defendants' requests to take appropriate actions.

On or about July 20, 1994, plaintiff received a "Minutes Entered" from defendant Swart. Defendant Swart's ruling was "Peremptory Challenge" denied because it was untimely in spite of the fact that Judge Charles Lee was being disqualified from the case no. GC 009783 by Stephen Law (ER 111).

Because defendant Swart's bias and prejuduces toward plaintiffs in case no. GC 009783, on August 8, 1994, plaintiff filed a motion, pursuant to Code of Civil Procedure, Sections 170.3 et seq. to

disqualify defendant Swart. Plaintiff's motion was denied on September 16, 1994 (ER 145 - 156) in spite of the fact that defendant Swart had never filed his consent or answer to plaintiff's motion.

On or about August 10, 1994, plaintiff sent a Certified letter to defendant Swart requesting him to disqualify himself from the case no. GC 009783.

Defendant Swart was not assigned to case no. GC009783 for all purposes. defendant Swart and abused his judicial discretion and his acts and conduct were not judicial.

5. DEFENDANT POTTER HAD VIOLATED CALIFOR-NIA CONSTITUTION ARTICLE I, SECTION 3 WHEN HE UNLAWFULLY RETURNED PLAINTIFF'S PETITION ON 9/30/94

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In Rapp v. Golden Eagle Ins. Co. 24 Cal.App.4th, 1167, 172; 30 CR2d 126, defendant Turner wrote the opinion holding

that a clerk cannot return an appeal or petition if there is any defect and should give the appellant or petitioner an opportunity to correct the defect.

On September 30, 1994, defendant Potter had no right to return the petition (ER 118). What's more, he had failed to present any evidence showing that he did not follow defendant Turner's unlawful order while defendant Turner was acting along.

6. DEFENDANT SAETA COMMITTED FRAUD WHEN HE WAS TOLD TO MAKE FINDINGS ON PLAINTIFF'S MOTION ONLY

As ER 53 depicts, defendant Saeta, a retired Superior Judge, informed plaintiff and Stephen Law that his estimate to review plaintiff's motion for determining sanctions was two hours and that he wanted a total of $700.00. Defendant Saeta, breached his own contract, willfully,

fraudulently, unethically, and unprofessionally charged plaintiff and Stephen Law more than his stated totals.

Since defendant Saeta was paid by plaintiff and Stephen Law, thus, no immunity should be given to defendant Saeta after defendant Saeta had committed faruds in case no. GC 009783.

7. DEFENDANTS TURNER, POTTER, AND SWART HAD VIOLATED THE AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)

Defendants Turner, Potter, and Swart had known plaintiff has physical disabilities from earlier cases. Yet, defendants Turner, Potter, and Swart had never tried to obey the law - ADA - not to discriminate against plaintiff in the instant case:

1) As ER 121, 122, and 123 demonstrate, defendants Turner and Potter should not ask plaintiff to file any

application for leave to file the "Writ of Petition . . .", case nos. B086884 and B087396 and willfully, unlawfully, fraudulently, and wantonly denied plaintiff's "Petition", case no. B087396:

2) Defendants Turner, Potter, and Swart knew Stephen Law has repeatedly used DUMMY names in his "Proofs of Service" (EXs 15, 19; ER 61 - 65);

3) Defendants Turner and Swart should not refuse plaintiff's requests that they be disqualified from case nos. GC 009783, B086884, and B087396 after defendants Turner and Swart had repeatedly, unlawful-ly, willfully, unethically, wantonly, and oppressively denied plaintiff's motions to disqualify them while permitted Stephan Law to disqualify Judge Charles C. Lee (ER 111, 112, 113).

8. THE COUNTY OF LOS ANGELES HAD A DUTY TO SAFELE KEEP COURT RECORDS (TOO

MANY DOCUMENTS WERE MISSING)

When plaintiff filed the complaint in case no. GC009783, plaintiff paid fees as required by law to the County of Los Angeles, who has the duty and responsibility to store and file all documents in safe keeping.

From April 22, 1993 to present, even after plaintiff had repeatedly asked the County of Los Angeles to properly and safely keep the court file in May, 1994, many records had continually disappeared from the court file. Because some records were not existed in case file, Stephen Law aka Zhanjun Luo aka Zhan J. Luo aka Stephen Luo, who had been declared as a Vexatious Litigant and had filed a Chapter 7 Bankruptcy Petition to frustrate state court's judgments (EX 19) and who was a defendant and Cross-Complainant in case no. GC 009783, had

repeatedly filed Peremptory Challenge to remove Judge Charles Lee and Judge Thomas Stoever in case no. GC009783.

Again, because records were missing, default has never been entered against Chi Cheung, who was a DUMMY defendant in case no. GC009783 and was invented by Stephen Law. Since the County of Los Angeles had failed to enforce the laws and has failed to keep all records in the case file, case no. GC009783, the County of Los Angeles, as a public enterprise, is liable for its employees' wrongful and unlawful acts and conduct as alleged in the complaint.

9. THE STATE OF CALIFORNIA HAD TAKEN PLAINTIFF'S MONEY WITHOUT PROVIDING SERVICES AS PAID FOR

The United States Constitution, Fifth Amendment provides that defendants the State of California and Turner shall not

deprive of plaintiff's life, liberty, or property without due process of law, nor shall take plaintiff's property for public use without just compensation.

The United States Constitution, Four-teenth Amendment, Section One provides that defendants the State of California and Turner shall not deprive plaintiff's life, liberty, or property, without due process of law; or deny plaintiff within its jurisdiction the equal protection of laws.

In the instant case, the State of California ignored and refused to take corrective action after plaintiff had presented facts and evidence re defendants Turner and Potter's wrongful and unlawful acts and conduct in case nos. B077109 and B083416.

Since defendantt Turner had acted like a loose cannon, had acted unprofessionally

and unethically, and the State of Calif -ornia had taken plaintiff's money on appeal in case no. B087396 and failed to provide service as the fees paid for, the State of California, as a public enterprise, is liable for damages caused by defendants Turner and Potter.

VII.

CONCLUSION

Mr. JUSTICE BRENNAN of the United States Supreme Court had stated in Adickes v. Kress & Co., 398 U. S. 144, 190, 90 S.Ct. 1598, 1620, 26 L.Ed.2d 142 (1970) that:

> "How 'Uniquely amiss' it would be, therefore, if the government itself - 'the social organ to which all in our society look for promotion of liberty, justice, fair and equal treatment, and the setting of worthy norms and goals for social conduct' - were permitted to disavow liability for the injury it has begotten."

This case is not to seek reviews of state courts' rulings. Rather, this case

is suing for damages for their willful and unlawful violations of plaintiff's civil rights, ADA, etc..

Based upon all of the foregoing points and authorities, defendants' acts and conduct violated clearly established State and Federal Statutory and the Constitutional Rights of which a reasonable person would have known.

Plaintiff respectfully requests that the Judgment be vacated and the case no. CV 95-7196-RMT (Mc) be remanded to district court for further proceedings.

DATED: September 3, 1996

/ S /

Shong-Ching Tong
Appellant Pro se

FILED

97 • 629 SEP 8 1997

OFFICE OF THE CLERK

No. _____

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

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SHONG-CHING TONG,

Petitioner

v.

PAUL TURNER, COLEMAN A. SWART, PHILIP M. SAETA, DANIEL P. POTTER, LOS ANGELES COUNTY, STATE OF CALIFORNIA,

Respondents

---

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

# PETITION FOR WRIT OF CERTIORARI

---

SUPPIEMENTAL APPENDIX

Shong-Ching Tong
1741 Phillips Dr.
Pomona, CA 91766
(909) 622-6884

Petitioner Pro Se

32PP

No._____

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IN THE

**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1997

---

SHONG-CHING TONG,

Petitioner

v.

PAUL TURNER, COLEMAN A. SWART, PHILIP M. SAETA, DANIEL P. POTTER, LOS ANGELES COUNTY, STATE OF CALIFORNIA,

Respondents

---

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

**PETITION FOR WRIT OF CERTIORARI**

---

SUPPLEMENTAL APPENDIX

Shong-Ching Tong
1741 Phillips Dr.
Pomona, CA 91766
(909) 622-6884

Petitioner Pro Se

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

| | | |
|---|---|---|
| SHONG-CHING TONG<br><br>Plaintiff,<br><br>v.<br><br>PAUL TURNER aka PAUL ARTHUR TURNER, et al.,<br><br>Defendants. | ) | Civil No. CV 95-7196-RMT (Mc)<br><br>FIELD, CLERK, U.S. DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA FEB 1, 1996 |

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE IN A CIVIL RIGHTS CASE

This Report and Recommendation is submitted to the Honorable Robert M. Takasugi, United States District Judge, pursuant to the provisions of 28 U.S.C. section 636(b)(1)(B) and General Order 194 of the United States District Court for the Central District of California.

BACKGROUND

The pro se plaintiff filed this civil rights action on October 24, 1995

against: (1) Justice Paul Turner of the California Court of Appeals; (2) Los Angeles Superior Court Judge Coleman A. Swart; (3) Daniel P. Potter, Chief Depu -ty of the Clerk's Office of the Califor -nia Court of Appeal, Second Appellate District; (4) Philip M. Saeta, a retired state court judge; (5) the State of Cali -fornia; and (6) the County of Los Angel -es. The plaintiff challenges certain rulings in a state court lawsuit in which the plaintiff was a party and a person named Stephen Law was an opposing party. Defendant Judge Swart allegedly referred a motion for sanctions filed by the plaintiff to defendant Saeta, who acted as a discovery referee. The plaintiff alleges that defendant Saeta issued a report which ruled against Stephen Law but which falsely reported the time spent hearing the motion. The plaintiff claims

that judge Swart approved Saeta's report. Defendant Swart thereafter allegedly refused to have Stephen Law declared vexatious and generally refused to compel Law to comply with discovery. Defendant Sawrt allegedly granted Law's motion to require the plaintiff to post security, even though Swart allegedly knew that Law had been declared vexatious by another judge.

The plaintiff alleges that he unsuccessfully attempted to have judge Swart disqualified and recused on the ground that judge Swart had discriminat -ed against the plaintiff "as a disabled person and of Chinese origin." The plaintiff claims that defendant Swart "failed to pursue the perjuries committ -ed by Stephen Law," unlawfully denied the plaintiff's motion to disqualify,. and thereafter wrongfully dismissed the

plaintiff's complaint. The plaintiff allegedly thereafter filed a petition for awrit of mandate with the California Court of Appeal. Defendant Potter alleg-edly returned the petition, telling plaintiff to file an "Application for pre-filing order." The plaintiff claims that he resubmitted his petition with the application, but that defendant jus-tice Turner unlawfully dismissed the petition on the ground that it was unti-mely. The California Supreme Court allegedly denied the plaintiff's petition for review.

The complaint contains five "counts-." Count 1 asserts a claim for violation of the First, Fifth, and Fourteenth Amendments and the California Constitution against all defendants. Count 2 purportes to be a claim for discrimination on account of national origin and

disbaility discrimination. Counts 3, 4 and 5 are state law claims for abuse of process and intentional and negligent infliction of emotional distress. In th prayer of his complaint, the plaintiff seeks unspecified general, special and punitive damages. However, in the body of his discrimination claim, the plaintiff also purportes to seek "all benefits" to which he would have been entitled in the absence of the discrimi-nation, and a permant injunction restra-ining the defendants from engaging in "similar" unlawful practices.

On Novemver 15, 1995, defendants Turner, Potter and State of California filed a motion to dismiss on the grounds that the court lacks jurisdiction over the subject matter and the complaint fails to state a claim upon which relief can be granted. Also on November 15,

1995, defendants Swart, Saeta and County of Los Angeles filed a motion to dismiss on the same grounds. On December 11, 1995, the plaintiff filed an opposition, accompanied by a request for judicial notice of various documents, including documents or portions of documents from the state court proceedings, correspondence, and documents from otherlegal proceedings whose relationship to the present action is obscure. On December 15, 1995, the plaintiff filed a motion to disqualify the magistrate judge. In accordance with Section 4.0 and 9.0 of General Order 224, all proceedings were stayed pending the determination of this motion. On January 26, 1996, the distri-ct court denied the motion to disquali-fy.

DISCUSSION

For the reasons discussed below, the

court should dismiss the federal claims with prejudice as against all defendant -s. The court should decline to exerci -se supplemental jurisdiction over the state law claims, and those claims should be dismissed without prejudice.

I. The Court Has No Subject Matter Jurisdiction Over Claims Attacking the Validity of State Court Decisions.

It is apparent that this action is a vehicle by which the plaintiff seeks district court review of the validity of state court orders. A United States District Court, as a court of original jurisdiction, has no authority to review the final determination of a state court made in judicial proceedings. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476, 103 S.Ct. 1303, 75 L. Ed.2d 206 (1983); Branson v. Nott, 62 F.3d 287, 291 (9th Cir.), cert. denied,

___U.S.___, 116 S.Ct. 565 (1995). Under the Feldman doctrine, the proper court in which to obtain such a review is the United States Supreme Court, by petition for writ of certiorari. District of Columbia Court of Appeals v. Feldman, 460 U.S. at 476; 28 U.S.C. Section 1257. "This is true even when the challenge to a state court decision involves federal constitutional issues." Branson v. Nott, 62 F.3d at 291. The claims against jus-tice Turner, judge Swart, and retired judge Saeta must be dismissed without leave to amend. See MacKay v. Pfeil, 827 F.2d 540, 543 (9th Cir. 1987) (Dismissal appropriate where subject matter jurisdiction is lacking under Feldman doctrine).

Application of the Feldman doctrine compels the conclusion that the claim against defendant Potter must also be

dismissed. The plaintiff asserts that he was wronged by Potter's return of the plaintiff's petition for review because the plaintiff had not submitted an "app-lication for pre-filing order." Compl-aint, Para. 25. The plaintiff alleges that he thereafter submitted the peti-tion with the application, and that def-endant Turner denied the petition on the ground that it was untimely. Comp-laint, Para. 27. the complaint thus suggests that the plaintiff wasa harmed by a delay caused by defendant Potter.

The court takes judicial notice, pursuant to Fed.R.Evid. 201, of the contents of Exhibit 6, p. 27 of Exhibit-s, to the plaintiff's opposition, con-sisting of a one-page order issued by defendant Turner denying the plaintiff's request for permission to file his peti-tion not only on the ground that the

petition was untimely, but also on the ground that it had no merit and had been filed for harassment purposes. The claim against Potter is simply part and parcel of the plaintiff's attempt to gain review in this court of the orders of the state Court of Appeal. This court lacks jurisdiction to review the decision of the state Court of Appeal.

II. Defendants Turner, Swart, Saeta and Potter Are Shielded by Absolute Judicial Immunity.

Judges are absolutely immune from suits for money damages for acts perform -ed in their judicial capacities. Mireles v. Waco, 502 U.S. 9, 9, 112 S.Ct. 286, 116 L.Ed.2d 9 (1991) (per curiam). Judicial acts are those involving the " ' performance of the function of resolving disputes between the parties, or of auth -oritatively adjudicating private rights

___U.S.___, 113 S.Ct. 2167, 2171, 124 L.Ed.2d 391 (1993) (citation omitted); see Atkinson v-Baker & Associates v. Kolts, 7 F.3d 1452, 1454 (9th Cir. 1993). Judicial Immunity applies " 'however erroneous the act may have been, and how-ever injurious in its consequences it may have proved to the plaintiff.' " Cleavinger v. Saxner, 474 U.S. 193, 199-200, 106 S.Ct. 496, 88 L.Ed.2d 507 (1985) (citation omitted); see Ashelman v. Pope, 793 F.2d 1072, 1075 (9th Cir. 1996) (en banc). Furthermore, "judicial immunity is not overcome by allegations of bad faith or malice." Mireles v. Waco, 502 U.S. at 11. A judge is subject liability only when: 1) the challenged action was not taken in the judge's judicial capacity, or 2) the challenged action was talen in the absence of all

jurisdiction. Id. at 11-12.

All of the alleged wrongful acts of defendants Turner and Swart occurred while they were acting in their judicial capacities presiding over matters before them over which they had jurisdiction. see Franceschi v. Schartz, 57 F.3d 828 8300831 (9th Cir. 1995) (municipal court commissioner immune from civil rights liability for issuing bench warrant and ordering plaintiff into custody after discovering plaintiff had driven himself to traffic hearing with suspended licen -se). The plaintiff argues that defendant Saeta was a "paid discovery referee, not a judicial officer." Plaintiff's Memorandum of Points and Authorities in Opposition to Motions to Dismiss, p. 8. Defendant Saeta was acting in a judicial capacity in rendering his decision and report. see Atkinson-Baker & Associates

v. Kolts, 7 F.3d 1452, 1454 (9th Cir. 1993) (acts of court-appointed special master committed within judicial capaci-ty). Therefore he too is protected by judicial immunity.

The court take judicial notice of the fact that the plaintiff had been declared a vexatious litigant in state court at the time of these events, and was subject to pre-filing review.[1] The

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[1] Los Angeles County Superior Court case No. VC 006762, October 20, 1993 Minute Order.

act of defendant Potter in refusing the plaintiff's petition because it was un-accompanied by an application for a pre-filing order was done in order to enfor-ce the state court's prior order for pre-filing review. Defendant Potter is absolutely immune from liability for enforcing the state court pre-filing

order. see Coverdell v. Dep't of Social and Health Services, 834 F.2d 758 (9th Cir. 1987); Kincaid v. Vail, 969 F.2d 594, 600-601 (7th Cir. 1992), cert. deni-ed, ___U.S.___, 113 S.Ct. 1002, 122 L. Ed.2d 152 (1993) (court clerk absolutely immune for acts done at judicial direction; canvassing cases).

The defendants' immunity extends to the discrimination allegations contained in count 2 against defendants Turner, Potter and Swart. The alleged "discriminatory" acts which form the basis for the plaintiff's claim under Title II of the Civil Rights Act of 1964, 42 U.S.C. Section 2000a, are "continuances of rulings" by defendant Swart, the return of the plaintiff's petition by defendants Turner and Potter, and Turner's dismissal of the plaintiff's petition. Compl-aint, Paras 51, 52. All of these acts

are within the scope of the judicial immunity enjoyed by these defendants.[2]

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[2] In the first paragraph of his compl-aint, the plaintiff states that he brings the action for violation of the Americans with Disabilities Act of 1990. The complaint does not state a claim for violation of the Americans with Disabi-lities Act, which is codified at 42 U.S. C. section 12101 et seg. Count 2 of the complaint alleges a violation of 42 U.S. C. Section 200a, part of Title II of the Civil Rights Act of 1964. Section 2000a prohibits discrimination in public accom-mondations on account of "race, color, religion or national origin." Physical disability is not defined as a protected class. Furthermore, section 2000a(b) does not include a court within the definitions of the places of public accommodation covered by the statute, which covers such establishments as places of lodging, restaurants, theater-s, and the like. Finally, a plaintiff bringing an action under this statute may obtain only injunctive relief, not damages. 42 U.S.C. Section 2000a-3(a), Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400, 402, 88 S.Ct. 964, 19 L.Ed. 2d 1263 (1968). Thus the complaint does state a Title II claim. In any event, the defendants would be shielded by judicial immunity from liability for money damages even if the plaintiff had pleaded an ADA claim against them. To the extent that the body of the complaint contains a request for injunctive relief against "similar" state court orders,

such relief would run afoul of the Feldman doctrine prohibiting review of any such "similar" orders of these defen -dants.

III. The Complaint Fails to State a Federal Claim Against the County of Los Angeles.

A governmental entity such as the County of Los Angeles cannot be held liable under 42 U.S.C. section 1983 on a theory of respondeat superior. Polk County v. Dodson, 454 U.S. 312, 325, 102 S.Ct. 445, 70 L.Ed.2d 509 (1981); Meehan v. County of Los Angeles, 856 F.2d 102, 106-107 (9th Cir. 1988). The Complaint does not identify any defendants as an employee or agent of the county. Justices of the Court of Appeal and Superior Court judges are members of the judiciary, not County employees. see Cal. Const. Art. 6, Secs. 1, 3, 4.

The plaintiff alleges that in the

state court lawsuit, "there are many documents were (sic) missing" Complaint, Para. 38. The plaintiff claims the Coun-ty has a "duty to safe keep all court papers filed." Id. The complaint alleges no county policy, custom or usage the application of which has caused harm to the plaintiff. see Gillette v. Delmore, 979 F.2d 1342, 1346 (9th Cir. 1992), cert. denied, 114 S.Ct. 345, 126 L.Ed 310 (1993). Accordingly, the plaintiff fails to allege how he was harmed by the alleged loss of the documents, or how the alleged loss violated any constitu-tional right. The complaint fails to to state a claim against the County.

VI. Jurisdiction Over the Supplemen-tal State Law Claims Is Inappropriate.

A federal court may decline to exer-cise supplemental jurisdiction over state law claims where it has dismissed

all claims over which it has original jurisdiction. 28 U.S.C. Sec 1367(c)(3); O'Connor v. State of Neveda, 27 F.2d 357 363 (9th Cir. 1994). cert. denied, ___ U.S.___, 115 S.Ct. 1367, 131 L.Ed.2d 223 (1995). "(I)n the usual case in which federal-law claims are eliminated before trial, the balance of the factors of economy, convenience, fairness, and comity will point toward declining to exercise jurisdiction over the remaining state-law claims." Id. (Internal quotations omitted). In this action, all of the federal claims upon which this cour -t's jurisdiction is grounded must be dismissed. The lawsuit is still at the pleading stage, and defendants have not yet filed answers to the complaint.

Considerations of economy, convenience, fairness and comity compel the conclusion that the supplemental jurisdiction should

not be exercised over the state law claims.[3]

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[3] The plaintiff has invoked the jurisdiction of this court to assert supplemental state law claims against California defendants whom he could not sue in state court without a pre-filing order. The current docket of this court lists a number of cases filed by the plaintiff in the last several years against state judges and other state and government officials. It may well be appropriate under these circumstances to decline supplemental jurisdiction under 28 U.S.C. Section 1367(c)(4), which provides that in "exceptional circumstances, jurisdiction may be declined for "compelling reasons." In light of the court's conclusion that supplemental jurisdiction should be declined under 28 U.S.C. Sec. 1367(c)(3), the court need not and does not reach this issue at this time.

CONCLUSION

A complaint filed pro se may only be dismissed without leave to amend where "it is absolutely clear that the deficiencies of the complaint could not be cured by amendment." Karim-Panahi v. Los Angeles Police Department, 839 F.2d 621, 623 (9th Cir. 1988) (citations and quota

-tions omitted); Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, L.Ed. 2d 80, 84 (1957) (dismissal with prejudice appropriate where "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief"). The court has no jurisdiction to review state court orders. The State of California is immune from suit. The plaintiff has stated no claim against the County of Los Angeles, or any county employees. All of the indi-vidul defendants in this action are abso-lutely immune from suit. In these circumstances, the deficiencies of the complaint cannot be cured by amendment, and the entire action should be dismissed with prejudice as to the federal claims, and without prejudice as to the supplemental state law claims.

## RECOMMENDATION

For the reasons stated above, the magistrate judge recommends that the Court issue an order: (1) approving and adopting this Report and Recommendation; (2) dismis -ing the complaint and the entire action with prejudice as all federal claims; and (3) dismissing the complaint and the entire action without prejudice as to the supplemental state law claims.

DATED: February 1, 1996.

James W. McMahon
United States Magistrate Judge

Shong-Ching Tong
1741 Phillips Dr.
Pomona, CA 91766

(909) 622-6884

Plaintiff Pro Se

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

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| SHONG-CHING TONG, Plaintiff, vs. PAUL TURNER aka PAUL TRTHUR TURNER) COLEMAN A. SWART,) PHILIP M. SAETA, DANIEL POTTER, Individually, COUNTY OF LOS ANGELES, THE STAE) OF CALIFORNIA Defendants. | CASE NO. CV 95-7196-RMT (Mc)<br>PLAINTIFF'S OBJECTION TO MAGISTRATE JUDGE'S REPORT AND RECOMMEN-DATION AND THE PROPOS ED JUDGMENTR; MEMORAN -DUM OF POINTS AND AUTHORITIES AND DECLA RATION OF SHONG-CHING TONG IN SUPPORT OF PLAINTIFF'S OBJECTION<br>FILED 96FEB 29 AM 10: 19<br>CLERK, U. S. DISTRICT COURT, CENTRAL DIST. OF CALIFORNIA |

COMES NOW, the Plaintiff Shong-Ching Tong ("Plaintiff") and submits the following Memorandum of Points and Authorities and Declaration of Shong-Ching Tong

in support of plaintiff's objection to Magistrate Judge's Report and Recommendation and the Proposed Judgment.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

### INTRODUCTION

This is a case involving defendants' violations of civil rights of plaintiff under constitutions of the United States and the State of California, Americans with Disabilities Act of 1990, and abuse of process, etc..

Because the Magistrate Judge's igno -rance of the evidence and facts in the instant case, plaintiff hereby submits his objection to Magistrate Judge's Report and Rcommendation.

### II.

### DEFENDANTS HAD FORFEITED THEIR IMMUNITIES BECAUSE THEY HAD ACTED

WITHOUT JURISDICTION

In Owen v. City of Independence, Mo., et al. 445 U.S. 621, 100 S.Ct. 2979, the U. S. Supreme Court held that:

> "Civil Rights Act, by its terms, creates a species of tort liability that on its face admits of no immun -ities; its language is absolute and unqualified, and no mention is made of any privileges, immunities, or defenses that may be asserted; rather, it imposes liability upon 'every person', who, under color of state law or custom, 'subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws.'"
> U.S.C.A.Const. Amend. 14.

> "The purpose of the Act (is) to provide protection to those persons wronged by the abuse of government authority and to deter future constitutional violations . . . ."

The U. S. Supreme Court further held that:

> "Section 1983 was intended not only to provide compensation to the victims of past abuses, but to serve as deterrent against future constitu -tional deprivations, as well."

In Monroe v. Pape 365 U.S. at 184, 81 S.Ct. at 482, the U.S. Supreme Court held that:

> "The central aim of the Civil Rights Act was to provide protection to those persons wronged by the misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law (quoting United States v. Classic, 313 U.S. 299, 326, 61 S.Ct. 1031, 1043, 85 L.Ed. 1386 (1941)). By creating an express federal remedy, Congress sought to enforce provisions of the Fourteenth Amendment against those who carry a badge of authority or misuse it."

The Supreme Court further held that:

> "The question with which we now deal is the narrower one of whether Congress, in enacting Section 1979, meant to give a remedy to parties deprived of constitutional rights, privileges and immunities by an official's abuse of his position (Citations Omitted). We conclude that it did so intend."

Mr. Justice BRENNAN of the United States Supreme Court had stated in Adickes v. Kres & Co. 398 U.S. 144, 190, 90 S.Ct. 1598, 1620, 26 L.Ed.2d 142 (1970):

"How 'uniquely amiss' it would be, therefore, if the government itself - 'the social organ to which all in our society look for promotion of liberty, justice, fair and equal treatment, and the setting of worthy norms and goals for social conduct' - were permitted to disavow liabili -ty for the injury it has begotten."

In Stump v. Sparkman 435 U.S. 349, 55 L.Ed.2d 331, 98 S.Ct. 1099, Mr. Justice STEWART of the U. S. Supreme Court, in his dissenting opinion, had stated "A judge is not free, like a loose cannon, to inflict indiscriminate damage whenever he announces that he is acting in his judicial capacity.

In Pierson v. Ray 87 S.Ct. 1213, 1220, Mr. Justice DOUGLAS, in his dissent -ing opinion, had stated, or quoted, that:

"Congress intended to provide a remedy for the wrongs being perpetrated."

"The Courts are in many instances under the control of those who are wholly inimical to the impartial administration of law and equity."

"There had been a complete breakdown

in the administration of justice in certain States and laws nondiscrimi -natory on their face were being applied in a discriminatory manner." @ p. 1221

"The section's purposes was to provide redress for the deprivation of civil rights. It was recognized that certain members of the judiciary were instruments of oppression and were partially responsible for the wrongs to be remeded . . . . Some State Courts have been instruments of sup -pression of civil rights . . . ; but the wrong to be remeded still exists." @ p. 1222

"I cannot believe that judges * * * would fail to discharge their duty faithfully and fearlessly according to their oaths and consciences." @ p. 1223

In Crooks v. Maynard (9th Cir. 1990) 913 F.2d 699, the Court held that:

"Mere fact that he is judge does not mean defendant has absolute immuni -ty; absolute immunity only applies to judicial acts and not to adminis -trative functions."

In plaintiff's complaint, plaintiff sought damages caused by defendants' violations of plaintiff's civil rights and the Americans with Disabilities Act

when the Statutes' languages are plain and clear. Therefore, the Magistrate Judge's findings of fact and conclusions of law were erroneous and should be denied.

III.

DEFENDANTS HAD ABUSED THE PROCESS

As copies of documents contained in Exhibit b filed herein demonstrate defen-dants had abused the judicial process as complained in the instant case.

Since defendants had abused the judicial process, the "Report and Recommendation" filed by the Magistrate Judge in the instant case is erroneous and, therefore, should be denied.

IV.

CONCLUSION

The Magistrate Judge's Report and Recommendation should be denied because his Report had ignored the fact and

evidence and the Statutes which showing that defendants had violated plaintiff's civil rights under the Constitutions of the United States and the State of California and the ADA and had abused the judicial process.

Further, Defendants had forfeited their immunities when they failed to comply with elementary principles of procedural due process and equal protection under the law and their acts and conduct were malicious, wanton, oppressive, intentional, and unlawful. The Exhibits have proved defendants' malici-ous, wanton, oppressive, and unlawful conduct and acts as alleged.

DATED: February 28, 1996

Shong-Ching Tong,
Plaintiff Pro se

DECLARATION OF SHONG-CHING TONG

I, SHONG-CHING TONG, declare:

1. Declarant is the plaintiff in the instant case and is familiar with the facts in this case and, if called upon to testify, could and would testify competently and from personal knowledge as to matters stated within this declaration.

2. In order for the court to review allegations contained in the complaint are true, declarant requests the court take judicial notice on all Exhibits attached to plaintiff's Objection filed concurrently herewith:

a. Motion of Peremptory Challenge, filed by Stephen Law.

b. Peremptory Challenge, etc., filed by Shong-Ching Tong.

c. Peremptory Challenge, etc., filed by Yei-Hwei Tong.

d. Notice of Motion and Motion to recuse judge Coleman A. Swart, etc., 8/8/94 (2 pages).

e. Defendant Denial P. Potter's letter, 9/30/94.

f. Cover Page, Petition for writ of mandate/prohibition, case no. B086884, 9/26/94.

g. Cover Page, Petition for writ of mandate/prohibition, case no. B087396, 10/12/94.

h. Order, case no. B087396, 10/13/94 by defendant Turner.

i. Cover Pages, Appellant's Opening Brief, Appellant's Reply Brief, Notice of Oral Argument, Case No. B086859, 11/28/94, 1/19/95, 10/26/95.

I declare under penalty of perjury of laws of California that the foregoing is true and correct, and that this declaration is executed on this 28th day of February, 1996 at Pomona, California.

_____

Shong-Ching Tong